

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOSHUAH D KING

Claimant

APPEAL NO. 09A-UI-06267-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CONCRETE CUTTING INC

Employer

OC: 01/04/09

Claimant: Respondent (4-R)

Iowa Code § 96.5(3)a – Work Refusal

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 15, 2009, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 19, 2009. Claimant participated. Employer participated through Tim Huddleston and Chris Campbell.

ISSUE:

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason and if he is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer did not make a specific offer to return to work but left messages for claimant. On March 31, 2009 he picked up his check and was instructed to call for work each day at 4 p.m. and 7 a.m. as everyone is supposed to do whether laid off or not. He told employer he had a DUI on August 31, 2008 and could not work without a valid driver's license because he must drive employer's vehicles and be covered under its insurance although he worked one day during the week ending February 28, 2009. He did not lose his license until May 1, 2009. He acknowledges receiving a message from Huddleston between April 25 and May 5 but did not return the call. He had worked for employer last year and knew what weather conditions were appropriate for work to restart for the season. He assumed his immediate supervisor Chris Williams would call him to work even though Huddleston schedules jobs and directs Williams to jobs and Williams specifically told him to call in for work. He claimed benefits for the week ending February 21, 2009 while he was on vacation in Florida from February 17 through 19 and then worked one day during the week ending February 28, 2009. He stopped claiming benefits after April 11 when he began working as a bartender at Uncle Buck's earning \$4.00 per hour plus tips.

The claimant has received unemployment benefits since filing a claim with an effective date of January 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work but was unavailable for work the week ending February 21 and again effective March 1, 2009.

Iowa Code § 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The offer was unsuitable, as it was not made in person, by telephone or in writing by certified mail. However, claimant was unavailable for work the week ending October 21 because he was on vacation the majority of the work week. He was also unavailable for work effective March 1, 2009 because he failed to follow employer's instructions to make himself available for work by

calling in when weather conditions permitted as he had done the previous year and assuming there was no work available given his DUI even though he did not lose his license until May 1, 2009.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant is ineligible for benefits the week ending February 21 and effective March 1, 2009, benefits were paid to which he was not entitled. The question of whether the claimant must repay these benefits is remanded to UIS Division.

DECISION:

The April 15, 2009, reference 02, decision is modified in favor of the appellant. Claimant did not refuse a suitable offer of work however he is unavailable for work and is ineligible for benefits the week ending February 21 and effective March 1, 2009. The question of whether the claimant must repay these benefits is remanded to UIS Division.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs